

Remarks

Claims 1-15, and 18-20 are pending in the subject application. By this Amendment, claims 1, 2, 3, 12, 15, and 14 have been amended. No new matter has been added by this Amendment. Support for the amendments to the claims can be found throughout the subject specification as originally filed (see, for example, page 2, lines 9-14; page 3, lines 1-7; page 7, line 32 through page 8, line 2; and the Abstract). Entry and consideration of the amendments presented herein is respectfully requested. Accordingly, claims 1-15 and 18-20 are currently before the Examiner for further consideration.

The amendments to the claims have been made in an effort to lend greater clarity to the claimed subject matter and to expedite prosecution. These amendments should not be taken to indicate the applicant's agreement with, or acquiescence to, the rejections of record. Favorable consideration of the claims now presented, in view of the remarks and amendments set forth herein, is earnestly solicited.

Initially, the applicant notes that this Action was incorrectly designated as final. The conclusion on page 6 states that applicant's "amendment necessitated the new ground(s) of rejection presented" in the Action. However, no amendment was presented in the applicant's most recent amendment. This was confirmed by Examiner Nguyen in a message left in April 2009 for the undersigned, in which the Examiner indicated that the designation of the Action as final was an error and that this Action should in fact be non-final.

The drawings have been objected to under 37 C.F.R. §1.83(a) for not showing every feature of the invention specified in the claims. The applicant respectfully traverses this objection because every feature is shown in the drawings. The Action states that the overlapping and underlying skirt portions are not shown in the drawings. However, these features are clearly depicted in Figures 1 and 2 as reference numerals **124** (overlapping skirt portion) and **126** (underlying skirt portion). These features are described at page 7, line 32 through page 8, line 2 of the subject specification and referred to as "formations." This disclosure, along with the Figures, page 3, lines 1-7, and original claims 12-14, conveys to a skilled artisan that the overlapping and underlying skirt portions are the formations **124** and **126** depicted in Figures 1 and 2. However, in an effort to provide further clarity by using language consistent with the specification, the applicant has amended claims 12 and 14 to

recite that the cladding apparatus comprises “a formation of an overlapping skirt portion” and “a formation of an underlying skirt portion”

Thus, the applicant submits that all features of the claims are clearly depicted in the current drawings. Accordingly, the applicant respectfully requests reconsideration and withdrawal of the objection to the drawings.

Next, the specification has been objected to for informalities. The applicant thanks the examiner for carefully reviewing the specification. By this Amendment, the applicants have amended the specification to correct the typographical errors on pages 8 and 9.

The Action also indicates that the batten is incorrectly labeled with reference numeral **154** on page 9 and that it should be **164**. However, the commencing batten member **154** is correctly labeled. Reference numeral **164** (cited by the Action at page 10, line 7 of the specification) is actually the connecting batten member, first discussed in the figures at page 9, line 22. Thus, the label of **154** at page 9, lines 14-16 of the subject specification is correct. Accordingly, the applicant respectfully requests reconsideration and withdrawal of the objection to the specification.

Claims 1-15 and 18-20 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The applicant respectfully requests reconsideration.

By this Amendment, claims 1 and 14 have been amended to recite “~~the~~ a junction.” Additionally, claims 2 and 3 have been amended to recite “~~the~~ ingress.” Thus, the applicant submits that there is sufficient antecedent basis for all terms in the claims and that the claims particularly point out and distinctly claim the subject matter which is regarded as the invention. Accordingly, the applicant respectfully requests reconsideration and withdrawal of the rejection under §112, second paragraph.

Claims 1-5, 12-13, and 19-20 have been rejected under 35 U.S.C. §102(b) as being anticipated by Baker *et al.* (U.S. Patent No. 4,914,885). The applicant respectfully traverses this ground for rejection because the cited reference does not disclose each and every element of the claimed invention.

By this Amendment, claim 1 has been amended to recite that the mounting batten is secured to the fascia of the building. Baker *et al.*, on the other hand, disclose in Figures 9-12 a cladding apparatus having no practical interrelation with a fascia. The applicant notes that the Action states

that a fascia is not positively claimed in the subject invention (page 4, third full paragraph, line 5). However, claim 1, as amended, positively relates the mounting batten to the fascia by requiring that the mounting batten be secured to the fascia.

As the Examiner is aware, it is a basic premise of patent law that in order to anticipate, a single reference must disclose within the four corners of the document each and every element and limitation contained in the rejected claim. *Scripps Clinic & Research Foundation v. Genentech Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991). As discussed above, Baker *et al.* fail to disclose an apparatus having any practical relation to a fascia, let alone a cladding apparatus with a mounting batten secured to a fascia of a building, as required by the claimed invention.

The applicant would also like to emphasize that Baker *et al.* disclose an apparatus for use with tile, slate, or shingle cladding apparatus, which is fundamentally different from the roof-to-fascia cladding apparatus of the claimed invention. The amendment to claim 1 to recite that the mounting batten is secured to the fascia has been presented to reinforce this distinction. Though it is not necessary to overcome the rejection under §102, the applicant submits that a skilled artisan would not have found a reason to modify the system of Baker *et al.* (for tile, slate, or shingles) to arrive at the claimed invention directed to a roof-to-fascia cladding apparatus.

Additionally, with respect to claim 4, the Action asserts that Baker *et al.* teach a cladding apparatus, “wherein said roof is provided with an elongate roof batten 20 sealingly supported on said roof, said roof batten 20 including an upper surface against which the inner surface of said body member 1 bears in use.” However, the applicant respectfully submits that the roof batten 20 of Figure 9 of Baker *et al.* is supported under the roof and supports a roof cladding. Thus, there is still no teaching or suggestion of the cladding apparatus of the claimed invention in which the mounting batten is secured to the fascia.

With respect to claim 5, the Action asserts that Baker *et al.* disclose a cladding apparatus, “wherein said flange 15 in use has its lower edge clear of said roof, so as not to interfere with intimate contact of said upper and inner surfaces.” However, Baker *et al.* requires that the flange 15 is above one tile and on the underside of another tile of the roof. Thus, the flange does not have its “lower edge clear of said roof,” as required by claim 5 of the subject invention. Instead, this is yet another novel feature of the claimed invention.

With respect to claim 13, the Action states that Baker *et al.* disclose in Figure 12 a cladding apparatus, “wherein mating faces of said overlapping skirt portion and said underlying skirt portion are provided with complementary surface features cooperating in use to form a weather impeding labyrinth.” However, reference to Figure 12 in context provides that there is a labyrinth formed at the region of overlap of adjacent, side-by-side tiles of a roofing system. In the claimed invention, on the other hand, the overlap protected by labyrinth is the fore-and-aft overlap between adjacent roof-to-fascia cladding apparatus. Baker *et al.* do not teach or suggest such a cladding apparatus. Instead, this is yet another novel feature of the claimed invention.

With respect to claim 20, the Action asserts that Baker *et al.* disclose in Figures 9-12 a cladding apparatus, “wherein one or both of said inner surface and upper surface are provided with one or more elongate grooves 12/14 forming, in use, a moisture-excluding labyrinth between said inner surface and said upper surface.” However, the applicant submits that the upper surface in the Baker apparatus is of a tile, not a roof batten, as required by the claimed invention. Also, the inner surface is of a cladding apparatus overlapping another roof tile, not the junction between a roof and a fascia as in the subject invention. Instead, these are further novel features of the claimed invention.

As discussed above, Baker *et al.* fail to disclose an apparatus having any practical relation to a fascia, let alone a cladding apparatus with a mounting batten secured to a fascia of a building, as required by the claimed invention. Moreover, several of the dependent claims include limitations not disclosed by the Baker reference. Accordingly, the applicant respectfully requests reconsideration and withdrawal of the rejection under §102.

Claims 14 and 18 have been indicated as allowed. The applicant would like to thank the Examiner for the indication of allowed claims.

Claims 6-11 and 15 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The applicant would like to thank the examiner for the indication of allowable subject matter in these claims. However, in view of the amendments and remarks presented herein, the applicant believes that all claims now presented contain allowable subject matter. Thus, these claims have not been rewritten in independent form.

In view of the foregoing remarks and the amendments to the claims, the applicants believe that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065.

The applicants invite the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



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